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THE POSITION OF

A CONSTITUTIONAL GOVERNOR

UNDER

RESPONSIBLE GOVERNMENT

—BY—

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in England, &c.*

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A CONSTITUTIONAL GOVERNOR.

There are few questions to which at the present time public attention is directed, in any part of the Queen's dominions,—of greater moment, or of more practical importance, than to determine what are the proper functions of a Constitutional Governor under the Crown of Great Britain.

There is, no doubt, a general impression abroad, amongst persons who have not bestowed much thought upon the matter, that the Governor of a British colony, or province, is little else than an ornamental appendage to our political system; necessary, to fulfil certain ceremonial duties; useful, to represent the community at large upon public occasions, or as the mouthpiece of public sentiment; and of unquestionable service to society, in the discharge of a dignified and liberal hospitality, to be freely extended to whoever may be a suitable recipient of vice-regal favour, without distinction of creed or party.

But if this were all that we had a right to expect from a Governor, it would be quite insufficient to justify the pre-eminence which is attached to his office, as a Representative of the Crown. Without underrating for a moment the incalculable advantages which society and the state derive from the fulfilment of the duties above enumerated, by men in exalted positions,—assisted by the ladies of their household—such ceremonial observances and festivities might, without much loss of dignity or efficiency, be assigned to Cabinet ministers, and other prominent officers of government, of adequate rank and fortune.

The Governor of a British dependency, however, within the limits prescribed by his Commission, is essentially a political officer: and the necessity for his office must be estimated according to the gravity and importance of the duties allotted to him in the body politic. If his duties in that relation are mainly formal, and his political functions of small account, the continuance of the office will be apt to be regarded as an expensive luxury, which cannot be justified by an economical people, or endured in an age which is intolerant of shams.

But if, on the other hand, a Constitutional Governor is actually invested with an authority which is eminently capable of being employed for the public good : and if he fills a place of trust, wherein he is competent, upon fitting occasions, to interpose to guard and protect the political liberties of those over whom he presides,—then it becomes the interest as well as the duty of all good citizens to respect his office, and to strengthen and uphold him in the exercise of its lawful prerogatives.

The gradual but vital change which the present generation has witnessed, in the relations of Executive authority in the self-governing Colonies of the British Empire, to the people, in their local legislatures, has led to the impression that no political duties remain to be fulfilled by a Constitutional Governor ; save only such as are of a formal and ceremonial kind.

This idea has been fostered by the assumption that the Sovereign herself, whose Commission the Governor holds, has ceased to be anything but a cipher in the state, without any measure of political power. That, in fact, the Cabinet of the day is an oligarchy, exercising an uncontrolled power in the administration of public affairs ; subject only to the necessity of obtaining a majority in the popular branch of the legislature to approve their policy, and to justify their continuance in office. Such a form of Government, however theoretically defensible in the abstract, in the estimation of some political thinkers, is not that of the British Constitution.

The unsoundness of such an idea, and its contrariety to existing constitutional practice, in the Mother Country, will be readily apparent to those who take the trouble to refer to the opinions expressed by leading statesmen in Great Britain, on this subject, within the past thirty years. Brougham, Grey, Russell, Derby, Gladstone and Disraeli, representative men of diverse parties, have each taken opportunity to testify to the vital and influential position which appertains to the Sovereign, in a Parliamentary Government.

The recent publication of Martin's *Life of the Prince Consort*, written under Her Majesty's own auspices, has contributed largely to our knowledge of the present practical operation of British Institutions. Apart from the attractive picture which it presents to us of the Prince himself, as a

zealous and accomplished fellow-labourer with the Queen, in fulfilling the arduous duties of royalty, this book is exceedingly instructive, in the glimpses it affords of the inner workings of the state-machine.

We are all familiar with the true doctrine of Constitutional Monarchy. We know that personal government by royal prerogative has given place to parliamentary government; and that under our parliamentary system the personal will of the Sovereign can only find public expression through official channels, or in the performance of acts of state, which have been advised or approved by responsible ministers. But we must not lose sight of the fact, that what has been termed the Impersonality of the Crown only extends to direct acts of government: that the Sovereign is no mere automaton, or ornamental appendage to the body politic,—but is a personage whose consent is necessary to every act of state, and who possesses full discretionary powers to deliberate and determine upon every recommendation which is tendered for the royal sanction by the ministers of the Crown. As every important act,—that is to say, everything which is not ordinary official routine, but which involves a distinct policy, or would commit the Crown to a definite action, or line of conduct, which had not previously received the royal approbation,—should first be sanctioned by the Sovereign, the Crown is thereby enabled to exercise a beneficial influence, and an active supervision over the government of the empire: and an opportunity is afforded to the Sovereign for exercising that “constitutional criticism.” in all affairs of state, which is the undoubted right and duty of the Crown, and which, in its operation, Lord Grey and Mr. Disraeli, amongst living statesmen, have concurred in declaring to be most salutary and efficacious.

Commenting upon the exercise of these constitutional powers, Prince Albert (in a memorandum which is given in Martin's *Life of the Prince*, vol. 2. p. 159,) remarks that the Sovereign “should be, if possible, the best informed person in the empire, as to the progress of political events, and the current of political opinion, both at home and abroad.” “Ministers change, and when they go out of office lose the means of access to the best information which they had formerly at command. The Sovereign remains, and to him this information is always open. The most patriotic Minister has to think of his party. His judgment, therefore, is often insensibly warped by party considerations. Not so the constitutional Sovereign, who is exposed to no such disturbing agency. As the permanent head of the

nation, he has only to consider what is best for its welfare and its honour; and his accumulated knowledge and experience, and his calm and practised judgment, are always available in council, to the ministry for the time, without distinction of party."

A constitutional ruler is, in fact, the permanent president of his own Ministry; with liberty to share in *the initiation*, as well as in the maturing of public measures: provided only, that he does not limit the right of his Ministers to deliberate, in private, before submitting for his approval their conclusions in council; and that they, on their part, are equally careful to afford to their Sovereign an opportunity of exercising an independent judgment upon whatever advice they may tender for his acceptance.

In subjecting that advice to the scrutiny of a mind intent only upon promoting the public good, an experienced and sagacious Sovereign is able (should the necessity unfortunately arise) to detect and rebuke selfish and unworthy aims, unmask the character of measures which may have been prompted by party motives rather than by a regard for the interests of the state, and exert, towards his Ministers, on the public behalf, a healthy moral suasion, capable of correcting the injurious operation of partisan or sectional influences.

Should it be needful for the Sovereign to proceed to extremity, and reject the advice of his Ministers, upon a particular occasion, it is for them to consider whether they will defer to the judgment of their Sovereign, or insist upon their own opinion; and as a last resort they must decide whether they will yield the point of difference, or tender their resignations. For, in the words of Lord John Russell, a minister, in such a position, "is bound either to obey the Crown, or to leave to the Crown that full liberty which the Crown must possess of no longer continuing that Minister in office."*

In such an emergency, of course, the personal will and opinions of the Sovereign are, for the time, apparent and predominant. But these occasions are of rare occurrence in the practical operation of parliamentary government. And when they do happen, all possible abuse is prevented by the necessity which then arises for the Sovereign to find other Advisers, who are willing to accept his views, and become responsible for them to

* Hans. Deb. vol. 119, p. 90.

parliament and to the country. Should he fail in this endeavour, then comes into operation one of those salutary checks, which the practice of the constitution has imposed upon the exercise of the royal prerogative, and the Sovereign is compelled to abandon a line of conduct for which he cannot find any statesmen who are willing to become responsible.

Ample security is thus obtained, that no changes of administration will be effected, by the intervention of the Crown, but such as would ultimately commend themselves to the judgment of parliament.

Moreover, it is a constitutional maxim, that whenever a change of ministry takes place, pursuant to an act of the Crown, the incoming ministers are responsible to parliament for the policy which occasioned, and for the acts of the Sovereign which brought about, the resignation or dismissal of their predecessors.

The right of a Sovereign to dismiss his Ministers is unquestionable; but that right should be exercised solely in the interests of the state, and on grounds which can be justified to parliament. By the operation of this principle, the personal interference of the Sovereign in state affairs is restrained within reasonable limits. It is prevented from assuming an arbitrary or self-willed aspect; and is rendered constitutional and beneficent.

From the secrecy which properly enshrines the intercourse between the Crown and its advisers, it rarely happens that the opinions or conduct of the Sovereign in governmental matters become known to the public at large. Accordingly, those functions of the Crown which are most beneficial in their operation are apt to be undervalued; because, whilst strictly constitutional, they are hidden from the public eye. But no attentive reader of English political history, since the accession of Queen Victoria, can fail to have noted frequent instances of timely action, wise interposition, or valuable suggestion upon affairs of state, which have emanated from Her most gracious Majesty, or her Consort; and which being approved and endorsed by the existing Administration, have contributed largely to the promotion of the public good. In Martin's Life of Prince Albert, especially, repeated mention is made of valuable memorandums upon public questions, prepared by the Queen, or by the Prince, on her behalf, and submitted for the consideration of Ministers. These papers

were often of great service, and sometimes contained the germs of practical administrative reforms, which, sooner or later, were advantageously accomplished. And this was in addition to the unceasing exercise, by the Sovereign, of that "constitutional criticism" over all state papers, already referred to; and which on one memorable occasion (during "the Trent affair" in 1861,) led to the modification of terms of remonstrance addressed in a despatch to the United States Government, and largely contributed to avert a threatened rupture between Great Britain and that power.*

These facts and considerations will enable us to estimate, aright, the important position which is occupied by the Sovereign of Great Britain, under Parliamentary Government.

Let us now turn our attention to the British Colonies. The administration of public affairs in such of these Colonies as have received representative institutions, was, until within the past 30 or 40 years, notoriously unsatisfactory. An irresponsible system of government prevailed therein, somewhat resembling the English method of administration, prior to the Revolution of 1688.

To remedy the grievances engendered, in Canada, by the lack of a spirit of harmony and co-operation between the Legislative and Executive authorities; Lord Durham was deputed, in 1838, to proceed thither as an Imperial High Commissioner, to inquire into affairs in British North America. In his Report, which was presented to Parliament in the following year, his lordship recommended the introduction, into the British North American colonies, of the principle of local self-government; in other words, the rendering of our Colonial polity, so far as was consistent with the maintenance of British connection, and of Imperial supremacy, "an image and transcript of the British Constitution."

Mr. Poulett Thomson (afterwards Lord Sydenham) was sent to Canada, in the autumn of 1839, as Governor General; and he was instructed to give effect to the principles set forth in Lord Durham's Report. Lord John Russell (then Colonial Secretary) officially notified Mr. Thomson of the system under which he was to administer the government, in two despatches dated 14 and 16 October, 1839. These despatches deprecated any attempt to apply the principle of ministerial responsibility, to a provincial assem-

* See Lord Russell's statement, in Hans. Deb. vol. 178, p. 72.

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bly, to acts of the Governor which were performed by him in obedience to the royal instructions, or to questions of an Imperial nature; as being at variance with the allegiance due to the British Crown. But the application of this principle to questions of local concern, was approved; and directions were given to change the tenure of office of the heads of public departments in the province, so as to admit of such offices being held by Executive Councillors, who should possess the confidence of the assembly, and of the removal of such persons from office "as often as any sufficient motives of public policy might suggest the expediency" thereof.*

On 3 September, 1841, a series of Resolutions were submitted to the Legislative Assembly of Canada, by Mr. Secretary Harrison (in amendment to a series proposed by Mr. Robert Baldwin,) which were unanimously agreed to, and which constitute, in fact, Articles of Agreement, upon the momentous question of Responsible Government, between the Executive authority of the Crown, and the Canadian people.

It was Resolved (1), that "the Head of the Executive Government of the province being, within the limits of his government, the Representative of the Sovereign, is responsible to the Imperial authority, alone; but that, nevertheless, the management of our local affairs can only be conducted by him, by and with the assistance, counsel and information, of subordinate officers in the province." (2) "That in order to preserve, between the different branches of the provincial parliament, that harmony which is essential to the peace, welfare and good government of the province, the Chief Advisers of the Representative of the Sovereign, constituting a Provincial Administration, under him, ought to be men possessed of the confidence of the representatives of the people; thus affording a guarantee that the well understood wishes and interests of the people, which Our Gracious Sovereign has declared shall be the rule of the Provincial Government, will, on all occasions, be faithfully represented and advocated." (3) "That the people of this province have, moreover, a right to expect from such Provincial Administration, the exertion of their best endeavours that the Imperial authority, within its constitutional limits, shall be exercised in the manner most consistent with their well understood wishes and interests."

* See Canada Assembly Journals, 1841, appx. B.B.

A further Resolution was proposed, by Mr. Baldwin, to assert the constitutional right of the Assembly to hold the Provincial Administration responsible for using their best exertions to procure, from the Imperial authorities, that their rightful action, in matters affecting Canadian interests, should be exercised with a similar regard to the wishes and interests of the Canadian people. But this Resolution, being presumably opposed to the principle of non-interference, by Colonial ministers, in matters of Imperial concern: as maintained in Lord John Russell's despatch, of 14th October, 1839; was, after debate, unanimously rejected.

Sir Charles Bagot, and Sir Charles Metcalfe, who were Governors of Canada in 1842, and in 1844, severally declared their acceptance of Responsible Government, as embodied in the foregoing Resolutions. But, during their term of office, the system itself was imperfectly understood, and mistakes were made, on all sides, in the application of this hitherto untried experiment in Colonial government to the practical administration of local affairs.

After a brief interval, during which Lord Cathcart (a military officer) was appointed Governor General, in view of the threatening aspect of our relations with the United States, the Imperial Government were impressed with the necessity for entrusting the management of affairs in Canada to a person who should possess an intimate knowledge of the principles and practice of the British Constitution, some experience of the House of Commons, and a familiarity with the political questions of the day. Such an one was happily found in Lord Elgin, who was accordingly selected by the Government of which Lord John Russell was premier, and Earl Grey, Colonial Secretary.

Previous to his departure for Canada, in January, 1847, Earl Grey carefully instructed the new Governor General, as to the line of conduct he should pursue, and the means he should adopt, in order to bring into full and successful operation, in British North America, the novel machinery of constitutional government.

In Earl Grey's History of the Colonial Policy of Great Britain, during Lord John Russell's ministry, we are informed of the general tenor of the instructions given to Lord Elgin, and of the successful result of his policy and conduct.*

* See Grey's Colonial Policy, vol. 1, pp. 206-234.

Lord Elgin's private letters to Earl Grey, (written from Canada, and posthumously published,) afford us some interesting details, and valuable suggestions as to his methods of administration. He says therein: "I give to my ministers all constitutional support, frankly and without reserve, and the benefit of the best advice that I can afford them in their difficulties. In return for this, I expect that they will, as far as possible, carry out my views for the maintenance of the connection with Great Britain, and the advancement of the interests of the province." But, (he adds.) "I have never concealed from them that I intend to do nothing which may prevent me from working cordially with their opponents, if they are forced upon me"; shewing my "confidence in the loyalty of all the influential parties with which I have to deal," and being devoid of "personal antipathies." "A Governor General by acting on these views, with tact and firmness, may hope to establish a moral influence in the province, which will go far to compensate for the loss of power consequent on the surrender of patronage to an Executive responsible to the local parliament." But, "incessant watchfulness, and some dexterity are requisite to prevent him from falling, on the one side into the *néant* of mock sovereignty, or on the other into the dirt and confusion of local factions."*

To the question, "whether the theory of the responsibility of provincial Ministers to the provincial Parliament, and of the consequent duty of the Governor to remain absolutely neutral in the strife of political parties, had not a necessary tendency to degrade his office into that of a mere *Roi fainéant*?" Lord Elgin gave an unqualified negative. 'I have tried,' he said, "both systems. In Jamaica there was no responsible government, but I had not half the power I have here, with my constitutional and changing Cabinet." Even on the Vice-regal throne of India, he missed, at first something of the authority and influence which he had exercised, as constitutional Governor, in Canada. This influence, however, was "wholly moral—an influence of suasion, sympathy, and moderation, which softens the temper while it elevates the aims of local politics."†

The success of Responsible Government in Canada, under the presidency of Lord Elgin, led to its gradual introduction into the maritime

* Walrond's Letters of Lord Elgin, pp. 40, 41.

† *Ibid*, pp. 125, 126.

provinces of British North America; and subsequently into the five protoguin provinces of Australia, into New Zealand, Tasmania, and the Cape of Good Hope.

In all these Colonies, the Imperial Government retains only the appointment of the Governor, and a veto on legislation,—(which privileges in the case of the provinces in the Canadian Dominion, are now exercised by the Governor General in Council,)—and has no control over any public functionary, except the Governor.

In these Colonies, the Governor is empowered by his Instructions, to appoint and remove Members of the Executive Council, “with reference to the exigencies of Representative Government;” —“it being understood that Councillors, who have lost the confidence of the local legislature, will tender their resignation to the Governor, or discontinue the practical exercise of their functions, in analogy with the usage prevailing in the United Kingdom.”*

The mode in which the Governor should discharge his delegated authority, under Responsible Government, is thus explained, in the Royal Instructions to the Earl of Dufferin, upon his appointment as Governor General of Canada, on 22 May, 1872. “If, in any case, you see sufficient cause to dissent from the opinion of the major part, or of the whole of Our Privy Council for Our Dominion, it shall be competent for you to execute the powers and authorities vested in you by Our Commission, and by these Our Instructions, in opposition to such their opinion; it being nevertheless, Our pleasure, that in every case it shall be competent to any Member of Our said Privy Council, to record at length, on the Minutes of Our said Council, the grounds and reasons of any advice or opinion he may give, upon any question brought under the consideration of such Council.”

By another Clause in His Instructions, the Governor General is forbidden to give the Royal Assent to certain classes of Bills, therein enumerated; but he must reserve the same for the consideration of the Imperial Government.

In his Commission of appointment, the Governor General is expressly empowered “to exercise, from time to time, as you may judge necessary, all powers lawfully belonging to Us, in respect of assembling, or pro-

* Colonial Regulations, 1877, sections 5, and 57.

the five provinces, the Senate or the House of Commons of Our said Dominion; and Cape of Good Hope of dissolving the said House of Commons;—and We do hereby give the like authority to the several Lieutenant Governors, for the time being, of the Provinces in Our said Dominion, with respect to the Legislative Councils, or the Legislative or General Assemblies of those Provinces, respectively.”*

Further light in regard to the application of Parliamentary Government to the Colonies of the British Empire, will be found in the Papers laid before the Imperial Parliament in 1860, describing the circumstances under which Responsible Government was introduced into New Zealand, in 1856.

An Act was passed by the Imperial Parliament, in 1852, granting a Representative Constitution to New Zealand. In September, 1855, Governor Gore Browne communicated to the General Assembly the desire of Her Majesty's Government that the colony should enjoy “the fullest measure of self-government which is consistent with its allegiance to the British Crown,” and that, accordingly, he would, as speedily as possible, “carry out in its integrity the principle of Ministerial Responsibility; being convinced that any other arrangements would be ineffective to preserve that harmony between the legislative and the executive branches of the Government, which is so essential to the successful conduct of public affairs.”†

A new parliament was first convened; and in April, 1856, the Governor commenced negotiations with a gentleman who was in the confidence of a majority in the Assembly, on the formation of a responsible ministry.

At the outset, the Governor declared his determination to maintain “a perfect neutrality in all party questions.” He then addressed a Minute, to the gentleman above referred to, with an explanatory Memorandum, defining his own views as to the relation which should subsist between himself and his responsible Advisers.

This Minute states, “(1) In all matters under the control of the Assembly, the Governor should be guided by the advice of gentlemen

* For Lord Dufferin's Commission, and Instructions, see the Journals of the Commons of Canada, 28 March, 1873.

† Commons Papers, 1860, vol. 46, p. 169.

responsible to that body, whether it is or is not in accordance with his own opinion on the subject in question." But, in explanation of this general proposition, it is added, that "the Governor of course reserves to himself the same constitutional rights in relation to his Ministers, as are in England practically exercised by the Sovereign." And that he does not include in the category of subjects under the control of the Assembly, any matters affecting the Queen's prerogative, and imperial interests in general. (2.) Upon all such matters, "the Governor will be happy to receive the advice of his Executive Council; but when he differs from them in opinion he will (if they desire it) submit their views to the consideration of Her Majesty's Secretary of State; adhering to his own until an answer is received."

Other questions, of purely local concern, are discussed in this Minute, which concludes by stating that "in approving appointments to vacant offices, the Governor will require to be assured that the gentlemen recommended are fit and eligible for their respective situations."

These terms and conditions were severally accepted and agreed to, by the incoming Ministers; with the understanding that they were open to alteration by the Colonial Secretary.*

In due course, the Secretary of State for the Colonies intimated to Governor Browne that "after the best consideration which they could give to the subject, Her Majesty's Government approve of the principles" upon which he proposed to administer the government of New Zealand, as the same were defined in the Minute and Memorandum aforesaid.†

The following precedents, of cases, illustrative of the present enquiry, which have arisen in the application of Responsible Government to Colonial administration, in different parts of the Empire, may be found serviceable.

Canada.

In 1843, Sir Charles Metcalfe being Governor General of Canada, and Messrs. Lafontaine and Baldwin, leaders of the provincial Administration, they obtained His Excellency's consent to submit to parliament some measure in relation to Secret Societies. But the Bill which they brought in was found to contain clauses, to which the Governor, repeatedly, took exception, on the ground that they were arbitrary, oppressive, and unconstitutional.

* Commons Papers, 1860, vol. 46, pp. 228, 229.

† *Ibid*, 481.

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ditional provisions. Nevertheless, the Bill passed through both Houses. Whereupon the Governor reserved it for the signification of Her Majesty's pleasure; determining to leave to the Imperial Government the responsibility of deciding upon the question. Ministers objected to this proceeding, and resigned; one only of their number remaining in office. After the prorogation of parliament, a new Administration was formed, and a dissolution of parliament ensued. In the new Assembly, the incoming Ministers were sustained; the Royal Assent was withholden from the Reserved Bill, upon the advice of the Home Government, and His Excellency's conduct was approved, by the Secretary of State.

In 1858, upon the defeat of Mr. John A. Macdonald's ministry, by an adverse vote in the Legislative Assembly upon the question of the Seat of Government, the Governor General (Sir Edmund Head) appointed the Brown-Dorion administration. Before the new Ministers had taken their seats, or announced their policy, the Legislative Assembly passed a Vote declaring a Want of Confidence in them. They then requested the Governor to dissolve parliament. His Excellency acknowledged his obligation "to deal fairly with all political parties: but [he considered that] he had also a duty to perform to the Queen and the people of Canada, paramount to that which he owed to any one party; or to all parties whatsoever." He therefore declined to dissolve parliament at this juncture, for stated reasons, and especially because a General Election had already taken place within the year. Upon which Mr. Brown, on behalf of himself and his colleagues, resigned office, and the late Administration was recalled.

From 1858 to November, 1873 (with the exception of a brief interlude from May, 1862 until March, 1864) the ministry of Mr. (afterwards Sir) John A. Macdonald, continued in office. They then resigned, on the Pacific Railway charges. A narrative of the circumstances attending their resignation of office, together with the despatches from the Earl of Dufferin (Governor General) to the Colonial Secretary, upon the subject, which embrace some interesting constitutional questions, will be found in the Journals of the Commons of Canada; Second Session of 1873.

The Maritime Provinces of British North America.

Responsible Government was introduced into Nova Scotia and New Brunswick in 1848, during the incumbency of Earl Grey, as Colonial Secretary.*

In 1849, that experienced statesman, and able exponent of the principles of Parliamentary Government, took occasion to comment, in the House of Lords, with regret, upon a transaction which had lately taken place in Nova Scotia, wherein the ministers and the provincial legislature had been parties to an act which had operated unfairly towards an old public officer. The Governor (Sir John Harvey) had acquiesced in this proceeding; although it had given rise to great complaint in the colony, and was regarded

* See Commons Papers, 1847-8, vol. 42, p. 49.

by the Imperial Government as unjustifiable. "Acknowledging that, in the end, a well considered, just, and temperate public opinion must govern in Nova Scotia as it does in England," Earl Grey, nevertheless, made known to the Governor his desire that all the correspondence in this matter should be laid before the colonial legislature, so as to afford them an opportunity of reconsidering the question. If after all, they should adhere to their own views, the Imperial Government were not prepared, in a matter of local concern, to oppose them.

In justification of the interposition of Her Majesty's Government under these circumstances, Earl Grey informed the House of the success which had attended a similar interposition, by himself, on a former occasion. He added, that he felt "bound to assert, that the power and influence of the Crown are by no means to be ineffective or unimportant." Doubtless, that power "should be used, not resolutely to resist and oppose, but judiciously to check and guide the public opinion of the colonies into proper channels."

His advice to Sir John Harvey had been,—“act strictly upon the principle of not identifying yourself with any one party; but instead of this, making yourself both a mediator and a moderator between the influential of all parties. In giving, therefore, all fair and proper support to your Council, for the time being, you will carefully avoid any acts which can possibly be supposed to imply the slightest personal objection to their opponents, and also refuse to assent to any measures which may be proposed to you by your Council which may appear to you to involve an improper exercise of the authority of the Crown, for party rather than for public objects.

"In exercising, however, this power of refusing to sanction measures which may be submitted to you by your Council, you must recollect that this power of opposing a check upon extreme measures, proposed by the party for the time in the government, depends entirely for its efficacy upon its being used sparingly, and with the greatest possible discretion. A refusal to accept advice tendered to you by your Council, is a legitimate ground for its members to tender to you their resignation,—a course they would doubtless adopt should they feel that the subject on which a difference has arisen between you and themselves was one upon which public opinion would be in their favour. Should it prove to be so, concession to their views must, sooner or later, become inevitable, since it cannot be too distinctly-acknowledged that it is neither possible nor desirable to carry on the government of any of the British provinces in North America in opposition to the opinion of the inhabitants."*

In 1860, the Lieutenant Governor of Nova Scotia (Lord Mulgrave,) was placed in a position somewhat analogous to that of Sir Edmund Head with the Brown-Dorion administration. After a dissolution of Parliament, his Ministers, who had had, previously, a good working majority, found themselves much weakened, their opponents being

* *Ibid*, p. 56. Hansard's Debates, House of Lords, March 26, 1849.

the end, a well-timed move as it does in the future, to ensure that all the members of the House, so as to afford a fair opportunity to all, should adhere to the principle of local confidence in the Ministry.

Whereupon, Ministers strongly urged upon the Governor the necessity for another dissolution of parliament, on public grounds, as well as in justice to themselves. But His Excellency carefully reviewed their arguments, dissented from their conclusions, and declined to accede to their request. He saw no "constitutional cause" for a dissolution, and deemed it to be neither expedient nor convenient that it should take place, so soon after a general election. Accordingly, the ministry resigned.

In charging the leader of the Opposition to form a new Administration, the Governor required of him a pledge, in writing, that he would grant every facility to a legal enquiry into the right to the contested seats; and that parliament should not be prorogued until that right was determined. This pledge was given, and faithfully kept. The result of the enquiry into the legality of impeached elections, proved the alleged disqualification to be unfounded, and the members duly elected. The ex-ministers persevered in their attempts to obtain a dissolution of parliament; but the Governor would not yield. The new ministry were sustained by the House, on a test vote, by a majority of four. And the Colonial Secretary, to whom the Governor reported all his proceedings, expressed entire approval of His Excellency's conduct.*

In 1855, a Prohibitory Liquor law was passed by the New Brunswick legislature. But the act proved to be wholly inoperative, and incapable of enforcement. Whereupon the Lieutenant Governor (J. H. Manners Sutton), without expressing any opinion upon the principle of prohibitory legislation, sent a Memorandum to his Ministers, in which he expressed his conviction that a continuance of the existing condition of affairs was fraught with peril to the best interests of the community, and called for immediate remedy. He therefore suggested a dissolution of parliament, with a view to a decided expression of public opinion in favour of, or in opposition to, the Prohibitory principle. Ministers dissented, altogether, from His Excellency's conclusions, and would not advise a dissolution. Further correspondence ensued, without a change of opinion, on either side. Finally, the Lieutenant Governor stated that as he "never contemplated a dissolution of the Assembly without the concurrence of Responsible advisers," he claimed that either the Executive Council should assume the responsibility for the issue of a proclamation of dissolution, or that they should retire, and enable him to seek for other advisers, who would consent to this Act. As Ministers still demurred, to either course, His Excellency directed the Provincial Secretary to prepare and countersign a Proclamation dissolving the Assembly. His request was complied with, but immediately afterwards the Ministry resigned. The

* Nova Scotia Assembly Journals, 1860; and 1861, Appx. No. 2.

Governor requested them to retain office until their successors were appointed. In nine days, he notified them that he had succeeded in forming a new Administration, who agreeing with him in the necessity for an immediate dissolution of parliament, were prepared to assume responsibility for the same.

The Elections took place without delay, and in less than three months after the change of ministry, an extra session of the legislature was convened. It was of very brief duration. But, in answer to the Speech from the Throne, both Houses expressed their satisfaction at the Governor's judicious exercise of his constitutional powers, and at the promptitude with which he had had recourse to the advice of Parliament. A Bill to repeal the Prohibitory Liquor law was submitted to the Assembly, as a ministerial measure. It passed, by a vote of 38 to 2 ; and was agreed to by the Legislative Council without a division. Thus, both the constitutionality and the expediency of the Governor's action, on this occasion, were distinctly ratified, by both Houses.*

In April 1866, there was a change of ministry in New Brunswick under the following circumstances. At a General Election in 1865, the expediency of a Union of the British North American colonies, upon terms agreed upon at a Conference of Delegates therefrom, held in Quebec, in October 1864, was a test question ; and a large majority of members was returned opposed to this project.

The Lieutenant-Governor (Mr. A. H. Gordon) was nevertheless of opinion that the earnest desire which the Imperial Government had expressed, in favour of the Union, justified him in again recommending the question to the consideration of the local legislature ; more especially as he believed that a vast change had recently taken place in the public sentiment on this question. Ministers differed with the Governor in this conclusion, and objected to the course he proposed to take. They reluctantly consented, however, to a less formal discussion of the Union question, with a view to discover whether some basis of agreement in accordance with the declared wishes of the Home Government might not be found. At this juncture, the Legislative Council passed an Address to the Queen, in favour of the projected Union, and presented the same to the Governor, for transmission to Her Majesty. In acknowledging the receipt of this Address, the Governor made use of language which his Ministers deemed to be inconsistent with their policy on this question. They accordingly resigned ; although, at the time, they were able to command a majority in the House of Assembly. His Excellency at once formed a new Ministry, who undertook to sustain his action in the matter.

A series of resolutions, condemnatory of the Address of the Legislative Council, and expressing disapproval of the Governor's conduct, were about to be proposed in the House of Assembly, when, upon the advice of the new Administration, the legislature was prorogued, and shortly afterwards dissolved. The ex-ministers, and their supporters,

* New Brunswick Assembly Journals, 1856-7, pp. 8, 23, 88.

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who constituted a majority in the Assembly, were indignant at this proceeding, and forwarded, through the Governor, an Address of remonstrance to the Queen. But, at the ensuing General Elections, a large majority of members, in favour of a Union of the provinces, was returned. Upon the re-assembling of the legislature, the new Assembly passed an Address, expressing their belief that the constituencies had justified the course adopted by the Governor.*

Australia.

In 1865, the Assembly in the province of Victoria endeavoured to pass a Tariff, to which a majority in the Legislative Council was notoriously opposed, by tacking it to the annual Appropriation Bill. Being constitutionally debarred from amending a Bill of Supply, the Legislative Council "laid aside" the measure. Whereupon the Governor (Sir Charles Darling) gave his sanction to Ministers obtaining a Vote of the Assembly authorizing the new Customs duties to be immediately enforced; and permitted the Ministry to borrow money from a Bank, for public uses, and to pay official salaries, but without the previous authority of an Act of parliament. For this conduct Sir Charles Darling was severely reprimanded by the Colonial Secretary (Mr. Cardwell.) He was told that the Queen's Representative "is justified in deferring very largely to his constitutional advisers, in matters of policy and even of equity. But he is imperatively bound to withhold the Queen's authority from all or any of those manifestly unlawful proceedings by which one political party, or one member of the body politic, is occasionally tempted to endeavour to establish its preponderance over another." ||

Subsequently, Sir C. Darling was recalled, or dismissed, on the ground that he had not only sanctioned acts of his Advisers which were legally unjustifiable, but also had placed himself in a position "of personal antagonism towards almost all those whose antecedents point them out as most likely to be available to him in any change of Ministry." †

Mr. Secretary Cardwell's conduct, and his dispatches on this occasion, were discussed in the House of Commons, and elicited, "from every quarter, the warmest encomiums." ‡

In a debate in the House of Lords, on 8 May 1868, on matters growing out of this case, leading statesmen, on both sides of the House, adverted to the constitutional position of a Colonial Governor, and to his duty to protect the Crown, if need be, against the proposals of his Ministers. §

* New Brunswick Assembly Journals, 1866, p.p. 74, 83, 202, 224.

|| Commons Papers, Victoria case, March 1866, pp. 103, 105.

† *Ibid.* Further Papers, June, 1866. p. 8.

‡ Hans. Deb. vol. 182, p. 621.

§ *Ibid.* vol. 191, pp. 1963—2001.

Of late years there has been much discussion, in the Australian Colonies, and also in Canada, upon the exercise, by the Governor, of the prerogative of mercy. Heretofore, it has been customary to hold the Governor of a colony exclusively responsible, by virtue of his Commission from the Crown, and the royal Instructions, to decide, according to his own deliberate judgment, and whether his Ministers agree with him or not, upon the propriety of extending or of withholding a pardon or reprieve, in criminal cases. But the right of the Colonial Ministers to advise the Governor in such questions has been distinctly recognized in the royal instructions, difficulties have sometimes arisen between the Governor and his Ministers in reference to this prerogative. And on one occasion, in New South Wales, in November 1874, a question arising out of the exercise of the prerogative of mercy, led to the downfall of a Ministry.

Animadverting upon these occurrences, in a circular despatch to the Governors of all the Australian colonies, dated 4th May 1875, the Secretary of State for the Colonies (Lord Carnarvon) explained the order to be observed by a Governor in consulting his Council upon a question, the ultimate determination of which devolved upon himself. This despatch proceeds to state, that "under a system of responsible government, a Governor will allow greater weight to the opinion of his Ministers in cases affecting the internal administration of the colony, than in cases in which matters of Imperial interest, or policy, or the interests of other countries or colonies, are involved." But that, under all circumstances, "a Governor may (and indeed must, if in his judgment it seems right,) decide in opposition the advice tendered to him. But the Ministers will have absolved themselves of their responsibility; and though, in an extreme case,—which, for the sake of argument, may be stated, although it is not likely to arise in practice,—[the local] parliament, if it disapproves the action taken, may require the Ministers to resign, either on the ground that they tendered wrong advice, or that they failed to enforce recommendations deemed to be right, I do not think the great principle of parliamentary responsibility is impaired by this result. On the other hand, a Governor who, by acting in opposition to the advice of his Ministers, has brought about their resignation, will obviously have assumed a responsibility for which he will have to account to Her Majesty's Government."*

In 1877, the Governor of New Zealand, (the Marquis of Normanby,) was censured by a Resolution of the House of Representatives, for "noticing a matter in agitation or debate in the House, as a reason for refusing to accede to advice tendered by his Ministers."

It appears that Ministers had advised the appointment of Mr. Wilson to a seat in the Legislative Council, at a time when a Vote of Want of Confidence in themselves was pending, in the House of Representatives. The Governor objected to make the appoint-

* Common Papers, 1875. C. Nos. 1202, 1248.

ment, under these circumstances; but expressed his willingness to do so if Ministers were sustained, on this Vote. The Governor's Memorandum, on this subject, was, upon the advice of Ministers, laid on the Table of the House; and immediately the question of privilege was raised. Meanwhile, the Vote of Censure was negatived: and then the Governor summoned Mr. Wilson to the Legislative Council, as he had promised.

But the Governor, with great justice, demurred to the conduct of his Ministers, in not shielding him from personal blame, in conformity with the constitutional rule: "That it is the Government and not the Governor, who must, so long as they remain his advisers, be solely responsible to Parliament for his acts." And that if Ministers are not prepared to accept or defend a particular act of the Governor, it is their duty to resign; in order that the Governor may be able, if he can, to form a Ministry who would support his views; leaving it to the Governor to justify his conduct to Her Majesty's constitutional adviser, the Secretary of State for the Colonies, to whom he is alone responsible. The Ministry, however, adhered to their opinion, that the Governor was to blame, on the abstract question of refusing to take their advice in a certain matter, because a Vote of Censure was pending. Neither would they admit their responsibility for his actions, to the full extent of the rule cited by the Governor. His Excellency, therefore decided to lay the whole correspondence before the local parliament, and to submit the whole case to the consideration of the Colonial Secretary.*

Similar questions were raised, in Tasmania, in October, 1877, in regard to the responsibility of Ministers to the Legislature for the acts of the Governor; and of the Governor's sole responsibility to Her Majesty, through the Secretary of State. The Tasmanian Ministers, upon receiving explanations from the Governor, upon these points, expressed their entire concurrence therein.†

See also Governor Canterbury's reply to a Memorandum of the Duffy administration, in Victoria, in 1872, stating his reasons for refusing to dissolve the Legislative Assembly of that province,—which had voted a Want of Confidence in the Duffy ministry,—because he did not consider that the fact of this Assembly having been elected under a preceding ministry, of opposite politics, was sufficient, in itself, to justify the defeated ministry, in claiming an appeal to the people. The Ministry accordingly resigned, and the Governor succeeded in forming a new Administration.‡

See, also, the reasons given by Governor Bowen, of New Zealand, in 1872, in refusing to accede to a dissolution of parliament at the request of Mr. Stafford, upon the defeat of his Ministry, on a Vote of Want of Confidence in the House of Representa-

* New Zealand Official Papers, 1877.

† Tasmania, Official Papers, 1877.

‡ Commons Papers, 1873, vol. 50. p. 315.

tives. The Stafford ministry then resigned, and the Waterhouse administration was formed. Subsequent events proved, without doubt, that the general opinion of the local parliament, and of the country, was in favour of the course pursued by the Governor on this occasion.*

It is a true proverb, that "history is philosophy teaching by examples." In this aspect, the foregoing precedents will serve a useful purpose. For they exhibit in action the leading maxims of Parliamentary Government, as expounded in the Despatches and other official papers, above cited; which have passed between Her Majesty's Secretary of State and Colonial Governors, since the introduction of Responsible Government into the Colonies.

An attentive examination of these authoritative documents will enable us to deduce from them the following leading principles:—

1. That the position of a Constitutional Governor, towards those over whom he is set, as the Representative of the Sovereign, and especially in relation to his Ministers, is one of strict neutrality. He must manifest no bias towards any political party; but, on the contrary, be ready to make himself a mediator and a moderator between the influential of all parties. And he must uniformly be actuated only by a desire to promote the general welfare of the province, or dependency of the empire, committed to his charge.

2. That a Constitutional Governor is bound to receive as his Advisers and Ministers the acknowledged leaders of that party in the State which is able, for the time being, to command the confidence of the popular assembly; or, in the last resort, of the people, as expressed, on appeal, through their representatives in the local parliament. And it is his duty to cordially advise and co-operate with his Ministers, in all their efforts for the public good.†

3. That in furtherance of the principle of local self-government, and of the administration of the Executive authority in harmony with the legislative bodies, it is the duty of a Constitutional Governor to accept the advice of his Ministers in regard to the general policy and conduct of public affairs; and in the selection of persons to fill subordinate offices in

* New Zealand Official Papers, 1873.

† See Grey, Colonial Policy, vol. 1, p. 211.

Administration was the public service ; and in the determination of all questions that do not directly interfere with the responsibility which he owes to the Imperial Government.

4. That in order to enable a Constitutional Governor to fulfil intelligently and efficiently the charge entrusted to him by the Crown, he is bound to direct,—as by his Commission and Instructions he is authorized to require—that the fullest information shall be afforded to him, by his Ministers, upon every matter which, at any time, shall be submitted for his approval ; and that no policy shall be carried out, or acts of executive authority performed, by his Ministers, in the name of the Crown, unless the same shall have previously received his sanction.

5. That while, under ordinary circumstances, a Constitutional Governor would naturally defer to the advice of his Ministers, so long as they continue to possess the confidence of the popular Chamber, and are able to administer public affairs in accordance with the well understood wishes of the people, as expressed through their representatives ; if, at any time, he should see fit to doubt the wisdom, or the legality, of advice tendered to him : or should question the motives which have actuated his Advisers on any particular occasion,—so as to lead him to the conviction that their advice had been prompted by corrupt, partizan, or other unworthy motives, and not by a regard to the honour of the Crown, or the welfare and advancement of the community at large,—the Governor is entitled to have recourse to the power reserved to him, in the Royal Instructions ; and to withhold his assent from such advice. Under these circumstances, he would suitably endeavour, in the first instance, by suggestion or remonstrance, to induce his Ministers to modify or abandon a policy or proceeding which he was unable to approve. But if his remonstrances should prove unavailing, the Governor is competent to require the resignation of his Ministers, or to dismiss them from office ; and to call to his councils a new Administration.

6. That the prerogative right of dismissing a Ministry can only be constitutionally exercised on grounds of public policy ; and for reasons which are capable of being defended and justified to the local Assembly ; as well as to the Queen, through her Ministers.

7. That upon a change of Ministry, it is constitutionally necessary that the gentlemen who may be invited by the Governor to form a new Admi-

nistration, shall be unreservedly informed by him of the circumstances which led to the resignation or dismissal of their predecessors in office; and that they shall be willing to accept entire responsibility to the local parliament for any acts of the Governor which have been instrumental in occasioning the resignation or effecting the dismissal of the outgoing Ministry. For it is an undoubted principle of English law, that no prerogative of the Crown can be constitutionally exercised unless some Minister of state is ready to assume responsibility for the same. Hence, the authority itself remains inviolate, however the propriety of its exercise may be questioned, or its use condemned. The authority of the Crown, in the hands of the Queen's Representative, should always be respected; and no one subordinate to the Governor should attribute to him, personally, any act of misgovernment; his Ministers being always answerable for his acts, to the local parliament, and to the constituent body.

8. That the Governor is personally responsible to the Imperial Government for his exercise of the prerogative right of dissolving Parliament: and he is bound to have regard to the general condition and welfare of the country, and not merely to the advice of his Ministers, in granting or refusing a dissolution. And should he deem it advisable to insist upon the dissolution of an existing parliament, contrary to the advice of his Ministers, he is not debarred from issuing the necessary orders to give effect to his decision, because his Ministers, for the time being, are sustained by a majority of the local assembly:—although such an act, on the part of the Governor, should involve their resignation of office. But no Governor has a constitutional right to insist upon a dissolution of parliament, under such circumstances, unless he can first obtain the services of other Advisers, who are willing to become responsible for the act: and unless he has reasonable grounds for believing that an appeal to the constituent body would result in an approval, by the new Assembly, of the policy, which in his judgment, rendered it necessary that the parliament should be dissolved.

9. That in the ultimate determination of all questions wherein a Constitutional Governor may see fit to differ from his Ministers, the declared intention of the Queen,—that She “has no desire to maintain any system of policy among Her North American subjects which opinion condemns,—”*

* Lord John Russell's despatch to Governor Thomson, of 14 October, 1839.

a principle which is equally applicable to every self-governing Colony, and which has been freely conceded to them all,—requires that the verdict of the people in parliament must be accepted as final and conclusive: and that the Governor must be prepared to accept an administration who will give effect to the same; or else, himself surrender to the Sovereign the charge with which he has been entrusted.

10. That in questions of an Imperial nature, wherein the honour of the British Crown is concerned, or the general policy of the Empire is involved,—as, for example, in the administration, by a Governor, of the prerogative of mercy; or, the reservation, under the royal instructions, of Bills, of a certain specified class, which had passed both houses of the local parliament, for the signification of the Queen's pleasure thereon,—it is the duty of a Governor to exercise the power vested in him, in his capacity as an Imperial Officer, without limitation or restraint. Nevertheless, in all such cases, a Constitutional Governor should afford to his Ministers full knowledge of the questions at issue, and an opportunity of tendering to him whatever advice in the premises they may desire to offer; albeit the Governor is bound, by his Instructions, and by his obligations as an Imperial Officer, to act upon his own judgment and responsibility; whatever may be the tenor of the advice proffered to him by his Ministers. In all such cases, the responsibility of the local Ministers to the local parliament would naturally be limited. They would be responsible for the advice they gave, but could not strictly be held accountable for their advice not having prevailed. For, "if it be the right and duty of the Governor to act in any case contrary to the advice of his Ministers, they cannot be held responsible for his action, and should not feel themselves justified on account of it in retiring from the administration of public affairs."*

But, according to constitutional analogy, no such right should be claimed by the Governor, except in cases wherein, under the Royal Instructions, he is bound as an Imperial officer, to act independently of his Ministers. If his discharge of this duty should be felt, at any time, as a grievance, either by his own Advisers or by the local Parliament, it would be a reasonable ground for remonstrance or negotiation with the Imperial Government; but it could not, meanwhile, absolve the Governor from his obligations to the Queen, under the Royal Instructions. It is, neverthe-

* The Colonial Secretary (Lord Carnarvon) as quoted in the Report of the Dominion Minister of Justice, (Mr. Blake) to Canadian Privy Council, of 22 December, 1875.

less, supposable, in an extreme case, that the local parliament might assume the right of punishing a Ministry, for advice given ; or of censuring them for not having resigned, if their advice had not been followed.

In this connection it will be suitable to make mention of a Report from the Minister of Justice for Canada (Mr. Blake) of Sept. 5, 1876, of his mission to England, to confer with Her Majesty's Secretary of State for the Colonies, on certain public matters. In conference with the Colonial Secretary, Mr. Blake suggested certain alterations in the present terms of the Royal Instructions, and Commission to the Governor General of Canada, with a view to the application to the Dominion of Canada, of the fullest possible measure of self-government. While asserting for the Dominion, that her vast extent of territory, her acknowledged position under the British North America Act, and her growing importance, entitled her to a larger application of the principles of constitutional freedom, than any other dependencies of the Empire, Mr. Blake expressly disclaimed any desire to weaken the rightful position of the Governor General, as the Representative of the Crown. He admits, in this able state-paper, the Governor's "undoubted right to refuse compliance with the advice of his Ministers, whereupon the latter must either adopt and become responsible for his views, or leave their places to be filled by others, prepared to take that course." He also regards as "unobjectionable" the authority vested in the Governor General, by the Royal Instructions, which confer upon him "the full constitutional powers which Her Majesty, if She were ruling personally instead of through his agency, could exercise." But he pleads for certain necessary changes in the formula of the Official Instructions to the Governor of Canada, so as to bring them into more complete accord with existing constitutional practice ; and with the constitutional powers and relations of the Crown, the Governor General, and his Council. It is gratifying to learn, that in reply to this communication, Her Majesty's Colonial Secretary, has made answer, that he "hopes to be in a position, at no distant date, to inform Lord Dufferin that he will advise an amendment of the Commission and Instructions, in general accordance with Mr. Blake's representations."*

11. That while it is objectionable in principle, and of rare occurrence in practice, that appeals should be made to the Imperial Parliament, in

* See Canada Sessional Papers, 1877, No. 13.

cases of difference between a Governor and the Executive or Legislative authorities of the colony over which he presides, or has presided,—so as to lead to the fighting over again, in the British Parliament, of colonial political contests,—yet, the reserved right of the Imperial Parliament to discuss all questions affecting the welfare of Her Majesty's subjects, in all parts of the empire, and to advise the Crown thereupon, is unquestionable; and a Governor, or ex-Governor of a British province, must always be mindful of his responsibility, not only to the Crown in Council, but also to both Houses of the Imperial Parliament, for the exercise of his political functions.*

12. That, in the absence of definite instructions, the Governor of every British colony should be guided, in all questions which may arise, or matters that may come before him, in his official capacity, by the constitutional usage of the Mother country; and it is his duty to ascertain the same, and conform himself thereto, so far as circumstances will allow.†

In the further elucidation of the rightful position of the Governor, in any of the dependencies of the British Crown, where Responsible Government prevails, it will be appropriate to enquire into the position and powers of the Lieutenant Governors of the provinces of the Dominion of Canada; with a view to determine how far the foregoing rules of constitutional practice are applicable to them.

Her Majesty's Secretary of State for the Colonies (Earl Carnarvon) in a despatch to Lord Dufferin, the Governor General, dated 7th January, 1875, observes, that these officers, "however important, locally, their functions may be, are a part of the Colonial Administrative Staff, and are more immediately responsible to the Governor General in Council. They do not hold Commissions from the Crown, and neither in power or privilege resemble those Governors, or even Lieutenant Governors, of Colonies to whom, after special consideration of their personal fitness, the Queen, under the Great Seal and Her own hand and signet, delegates portions of Her prerogatives, and issues Her own Instructions."‡

* See Earl Grey in Hansard's Debates, vol. 103, p. 1280. Case of British Guiana. *Ibid.* vol. 107, p. 930. Parliamentary Debates on the case of Governor Eyre, of Jamaica, in 1866 and 1867: of Governor Darling, of Victoria, in 1868: of Governor Hennessy, of Barbadoes, in 1876.

† Report of the Attorney General of Ontario (Mr. Mowat) dated 16th December, 1873, concerning the allowance of certain Bills by the Dominion Government: Ontario Papers, First Session, 1874.

‡ Canada Sessional Papers, 1875, Lepine's case, p. 38.

Pursuant to this declaration, it has been decided, by the Imperial Secretary of State, upon the advice of the Law Officers of the Crown, that since the Confederation of the British North American Colonies, the Lieutenant Governors of the several Provinces of the Canadian Dominion, being no longer appointed directly by the Sovereign, have ceased to be competent to exercise the prerogative power of pardoning offenders; which is now exclusively delegated in Canada to the Governor General, by his Commission.*

Moreover, under the 90th section of the British North America Act, 1867, the power of disallowing Provincial Statutes is not conferred upon the Queen in Council, (as in respect to Dominion legislation, under section 56 of the same Act,) but is vested in the Governor General of the Dominion; and is to be exercised by him pursuant to the 13th section of that Act, "by and with the advice of the Queen's Privy Council for Canada."

Taking into account the powers assigned to the Provincial Legislatures, under the Act aforesaid, it is evident that they are only competent to legislate upon certain subjects of a local nature, which can only affect provincial, or at the most, Canadian interests. It is reasonable, therefore, that the tribunal which must finally determine upon the validity or expediency of provincial legislation, and upon the propriety of the allowance or disallowance of provincial Acts, should be the central authority of the Dominion Government. The exclusive jurisdiction of the Governor in Council upon such questions was unanswerably maintained in a Report to the Canadian Privy Council by the Minister of Justice (Mr. Blake), of 22 December, 1875, which treats of Ministerial Responsibility in connection with the disallowance of Provincial Acts.†

But in deciding upon the validity or expediency of Provincial enactments, the Governor in Council has no arbitrary discretion. The decision of the Dominion Government upon such questions must be in conformity with the principles embodied in the British North America Act. That statute recognizes and guarantees the principle of local self-Government, in all cases within the competency of the Provincial Authorities; and does not contemplate any interference therewith, except in regard to Acts which transcend the lawful bounds of provincial jurisdiction, or

* Canada Sessional Papers, 1869, No. 16.

† Canada Sessional Papers, 1876, No. 116.

assert a principle that might injuriously affect other portions of the Dominion.*

It is, indeed, a supposable case, that a Provincial Act might come under review by the Dominion Governor in Council, which should be found to contain provisions "of an extraordinary nature and importance," such as if the Bill had been enacted by the Dominion Parliament, the Governor, under the Royal Instructions, would be required to reserve for the consideration of the royal pleasure thereon. And that the Canadian Privy Council might deem it expedient to advise that this particular measure should be permitted to go into operation, contrary to the opinion of the Governor General. Whatever proceedings the Governor General might be competent to take in such a contingency, in order to vindicate his own judgment in the matter, it is obvious that, under the British North America Act, he would not be at liberty to reserve the Bill for the consideration of the Crown; for "as the power of confirming or disallowing Provincial Acts is vested by statute in the Governor General of the Dominion, acting under the advice of his constitutional Advisers, there is nothing in this case which gives to Her Majesty in Council any jurisdiction over this question"; though "it is conceivable that the effect and validity of" any provincial enactment might, at some future time, "be brought before Her Majesty, on an appeal from the Canadian Courts of Justice."†

The foregoing considerations will materially assist us in concluding how far the rules, in which we have ventured to define the rightful position of a Colonial Governor towards his constitutional Advisers, are applicable to Lieutenant Governors of the Canadian Provinces.

It is true that these officers are appointed by the Governor General in Council, and that they hold a less prominent and important position than that of a Viceroy, a Governor, or a Lieutenant Governor, who is directly nominated by the Crown. Consequently, they are not competent to administer, by delegation, the royal prerogatives,—either of mercy or of honour. Nevertheless, the Lieutenant Governors of the Canadian provinces are expressly named in the Queen's Commission appointing the

* See the Memorandum of the Minister of Justice (Sir John A. Macdonald,) of August 26, 1873, in reference to certain Orange Incorporation Acts, passed by the Ontario Legislature; Ontario Sessional Papers, 1874. First Session.

† Opinion of the Lord President of Her Majesty's Privy Council, in a letter to the Clerk of the Privy Council, dated 13 December, 1872.

Governor General, and are therein empowered "to exercise, from time to time, as they may judge necessary, all powers lawfully belonging" to the Sovereign, "in respect of assembling, or proroguing, and of dissolving, the Legislative Councils, or the Legislative or General Assemblies, of those provinces, respectively."*

Moreover, in all the British Colonies, every act of the Executive runs in the name of the Queen. Parliaments, whether federal or provincial, are opened in Her name, and by Her Governors. "Legislation is carried on in Her name,—even in provinces, as in Canada, which are directly subordinate to a federal Government, instead of to Imperial authority."*

So that, in a modified but most real sense, even the Lieutenant Governors of the Canadian provinces are Representatives of the Crown. And inasmuch as the system of responsible government has been extended and applied to the Provincial Constitutions, within their respective spheres of action, as unreservedly as in the Dominion itself, it follows that that system ought to be carried out, in its entirety; and that the Lieutenant Governor should stand in the same relation towards his Executive Council, and towards the local legislature, as is occupied by the Governor General in the Dominion, or by the Queen in the Mother Country.

Under the British North America Act (section 59,) a Lieutenant Governor of a province holds office during pleasure, but is not removable within five years from his appointment, "except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made," which cause is also to be communicated, by message, to both Houses of the Dominion Parliament.

This enactment establishes a direct responsibility to the Canadian Parliament, not only for the selection of fit and proper persons to fill these important posts, but also for any needful exercise of Executive authority in removing a Lieutenant Governor from office, before the expiration of his term of service. Accordingly, either House of the Dominion Parliament must be regarded as constitutionally competent to express an opinion, or to tender advice to the Governor General, upon any matter arising out of the appointment of a Lieutenant Governor, or his fulfilment of the duties entrusted to

* Lord Dufferin's Commission, in Canada Commons Journals, 28 March, 1873. See, also, the British North America Act, 1867, section 82.

* Mr. Disraeli, Hans. Debates, vol. 228, p. 280.

him ; just as the Imperial Houses of Lords and Commons are competent to deliberate and advise the Crown upon any question affecting the welfare of British subjects in any part of the realm :—but with this proviso, that inasmuch as an exclusive jurisdiction, in certain specified matters, is conferred upon the Provincial legislatures,—by the Imperial Act under which both the Dominion and the Provincial Constitutions are regulated,—it is alike incumbent upon the Dominion Parliament, upon the Governor General in Council, and upon the Governor General as an Imperial Officer, representing the Crown in the Dominion, to respect and uphold the federal rights secured to the several Provinces, by that Statute, and to refrain from any encroachments thereupon, or interference therewith.*

In conclusion, it may not be out of place to remind those who peruse these pages, that the authority which is herein vindicated, is that of the ancient Monarchy of England ; not as it used to be exercised of old, by Sovereigns who claimed to be above the law, and for whose actions no one was directly accountable to Parliament : but as it has been regulated and defined by those constitutional safeguards under which the liberties of the English people were secured, at the Revolution of 1688. That Revolution was no uprising of the democracy, to destroy existing institutions ; it was a legal settlement of relative powers in the State, which bestowed upon the nation the inestimable advantages of a Monarchy, combined with the freedom, elasticity and responsibility, which appertain to a Parliamentary Government.

Wherever Englishmen colonise, it is said that they carry with them the political institutions which are their birthright at home. And in conferring upon her Colonies Responsible Government, it has been the aim of the Mother Country to secure to them the stability, impartiality, and intelligent supervision of a Governor, responsible only to the Crown, in co-operation with an Administration responsible to the people, through their representatives.

Lord Elgin, in his private correspondence, from which I have already quoted, contends earnestly for the superiority of British institutions, over those of the United States ; because of the indispensable advantages which

* See the debates in the Canadian House of Commons on the New Brunswick School question, in 1872 and 1873 ; and the papers laid before parliament on that subject. And see Lord Dufferin's despatch to the Colonial Secretary, of 15th August, 1873, p. 16, Canada Official Papers.

accrue from the monarchical element in our constitutional system ; and the useful purposes served by the Crown, notwithstanding its limited and unobtrusive functions. And he insists that " the executive and legislative departments of the State could not be made to work together, with a sufficient degree of harmony to give the maximum of strength and of mutual interdependence, to secure freedom and the rights of minorities, except under the presidency of Monarchy ; the moral influence of which, so long as a nation is monarchical in its sentiments, cannot of course be measured merely by its recognized power." *

As the Imperial Executive gradually withdraws from interference in colonial affairs, " the office of Governor tends to become,—in the most emphatic sense of the term,—the link which connects the Mother Country and the colony, and his influence the means by which harmony of action, between the local and imperial authorities is to be preserved." From his independent and impartial position, the opinion of a Governor must needs have " great weight in the Colonial Councils ; while he is free to constitute himself, in an especial manner, the patron of those larger and higher interests,—as, of education, and of moral and material progress, in all its branches,—which, unlike the contests of party, unite instead of dividing the members of the body politic." †

These wise words, which so admirably express the eminent services, to the state and to the people, which a Constitutional Governor is capable of rendering, form the closing sentences of the last official despatch which Lord Elgin wrote, on relinquishing the government of Canada ; they were dated from Quebec, on December 18, 1854.

To the same effect, we are reminded by the Duke of Argyll, that the nomination of Governors is almost the sole remaining bond of connection between the Mother Country and colonies possessing parliamentary institutions ; and that this tie is retained solely in the interests of the Colonies themselves. It saves them from the evils of Presidential Elections, and places over them a Governor who is above all party contests, and who represents the dignity and impartiality of the British Crown. ‡

* Walrond's Letters of Lord Elgin, pp. 120-124.

† *Ibid.* pp. 126—128.

‡ Hans. Deb. vol. 191, p. 2001.

Every true patriot, every friend of British connection, and every loyal subject of the Queen, should then cherish, respect, and uphold, the office of a Constitutional Governor, and abstain from all attempts to involve the Crown, in the person of its Representative, in a participation in the struggles of party warfare. A Governor should never be held accountable, within the sphere of his government, for the policy or conduct of public affairs ; so long as he can find Ministers who are ready to assume responsibility for the same, to the local legislature. His personal responsibility is due only to the supreme power, from whence his authority is derived.

